

Docket No.: 17065/004001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
James Alfred Thompson

Confirmation No.: 8553

Application No.: 10/656,687

Art Unit: 2423

Filed: September 5, 2003

Examiner: J. O. Mendoza

For: CABLE NETWORK ACCESS CONTROL
SOLUTION

APPELLANTS' REPLY BRIEF UNDER 37 CFR § 41.41

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR § 41.41, please consider the following Appellants' Reply Brief in the referenced Application currently before the Board of Patent Appeals and Interferences. The present Reply Brief is in response to the Examiner's Answer dated April 1, 2011 ("Examiner's Answer").

I. STATUS OF CLAIMS

U.S. Patent Application Serial No. 10/656,687 ("the '687 Application") was filed on September 5, 2003. As filed, the '687 Application included claims 1-39. In a reply under 37 C.F.R. § 1.111 dated October 20, 2008, claims 2 and 20 were cancelled without prejudice or disclaimer. Further, in a reply under 37 C.F.R. § 1.114 dated March 24, 2009, claims 16, 17, 28, and 29 were cancelled without prejudice or disclaimer. Accordingly, claims 1, 3-15, 18-19, 21-27, and 30-39 are

pending in the '687 Application. Claims 1, 19, 30, and 39 are independent. The remaining claims depend directly from claims 1, 19, and 30.

All the pending claims were rejected in an Office Action dated September 2, 2010 ("Office Action").

Claims 1, 3-15, 18-19, 21-27, and 30-39 are on appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The present Appeal addresses the following grounds of rejection:

- Whether claims 1, 3-7, 9, 10, 12, 13, 15, 18, 30, 33, and 35-39 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent Publication No. 2004/0128508 (hereinafter "Wheeler") in view of US Patent No. 4,502,609 (hereinafter "Christatos") further in view of U.S. Patent No. 7,111,318 (hereinafter "Vitale") further in view of U.S. Patent No. 6,785,908 (hereinafter "Kamiya").
- Whether claims 19, 21-23, and 25-26 are unpatentable under 35 U.S.C. §103(a) over Wheeler in view of Christatos further in view of Kamiya.
- Whether claim 8 is unpatentable under 35 U.S.C. §103(a) over Wheeler in view of Christatos further in view Vitale in view of Kamiya further in view of U.S. Patent No. 6,472,973 (hereinafter "Harold").

- Whether claims 11, 24, 31, and 32 are unpatentable under 35 U.S.C. §103(a) over Wheeler in view of Christatos further in view Vitale in view of Kamiya further in view of U.S. Patent Publication No. 2002/0147982 (“Naidoo”).
- Whether claims 14, 27, and 34 are unpatentable under 35 U.S.C. §103(a) over Wheeler in view of Christatos further in view Vitale in view of Kamiya further in view of U.S. Patent Publication No. 2004/0050930 (“Rowe”).

III. SUPPLEMENTAL ARGUMENTS

Appellants submit the following supplemental remarks in response to the Examiner’s Answer. The Examiner reply to arguments presented in the Appeal Brief filed on February 1, 2011 are all predicated on flawed assumption, namely, that the “pertinent problem being solved is: the prevention of cable theft.” (Examiner’s Answer, p. 26) (Emphasis omitted).

Appellants have repeatedly asserted that this is not the pertinent problem. The pertinent problem is cable theft in Legacy Cable Distribution Box that used keyed locks as a mechanism to secure the Legacy Cable Distribution Boxes (*see* Pre-Appeal Brief filed December 2, 2010, p. 3 and Appeal Brief filed February 1, 2011, p. 12). The Appellants have attempted to address this issue with the Examiner on numerous occasions. Unfortunately, the Examiner has continued to ignore the Appellants’ arguments and has not provided any response to the Appellants’ assertions – other than make the above conclusory statement about the scope of the “problem” (*see* Examiner’s Answer, p. 26). In continuing to assert that the “pertinent problem being solved is: the prevention

of cable theft,” the Examiner has opted to substitute his opinion and ignore the opinion of four subject matter experts thereby violating the requirements set forth in MPEP § 716.01(d).

Further, while the Examiner’s Answer arguably show that the Examiner has considered the probative value of the declarations, the consideration is lacking. In particular, the Examiner only considered the probative value of the declarations based on his incorrect characterization of the problem (*see* Examiner’s Answer, p. 29). Because the Examiner improperly characterized the problem, any analysis of the declarations based on the improper characterization surely cannot rise to the level of consideration contemplated in MPEP § 716.01(d).

CONCLUSION

In view of the above, the Examiner has failed to properly consider the declarations submitted in the instant application. Based on the Examiner’s improper consideration of the submitted declarations, Appellant’s request that the Board of Patent Appeals and Interferences reverse the Examiner’s rejection and allow the instant application.

Dated: June 1, 2011

Respectfully submitted,

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